

REMARKS

Claims 1-10 and 12-42 are pending in the present application. Claims 1, 18, 34 and 38 have been amended. Claims 1 and 18 have been amended to overcome rejections to under 35 U.S.C. § 112, as further discussed below. In order to eliminate multiple dependencies, claim 34 has been amended to depend from claim 1, and claim 38 has been amended to depend from claim 34.

Support for these amendments is found throughout the disclosure of the present invention, *e.g.*, in the Specification, at page 10, lines 18-22; and in claims 11, 18, 34 and 38 as filed. Therefore, no new matter has been introduced. Applicant respectfully requests entry and favorable consideration of the present amendments, since they are believed to place the application in condition for allowance, or at a minimum to reduce the issues for appeal.

Brief Description of the Drawings

The *Office Action* states that the instant specification lacks a brief description of the drawings. Applicant has herein amended the Specification to include a Brief Description of the Drawings (*i.e.*, Figures 1 through 5). Applicant has also amended the Specification to include the title of the section, “Detailed Description” after the Brief Description of the Drawings. Applicant respectfully submits that in light of these amendments, this objection has been overcome, and respectfully requests that it be reconsidered and withdrawn.

Rejection of Claims 1-10 and 12-42 Under 35 U.S.C. § 112, Second Paragraph

Claims 1-10 and 12-42 have been rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. Applicant respectfully traverses.

Claim 1 has been rejected because, according to the *Office Action*, “[i]t is not clear what is intended in claim 1 by the phrase ‘is such that’ given that claim 1 does not disclose what feature ‘is such that’ refers to or what ‘is’ refers to.” (*Office Action*, p. 2).

Applicant has clarified claim 1 to point out that the “is such that” language refers to the composition recited in claim 1. Support for this amendment can be found in, e.g., claim 11 as filed, which was previously canceled in applicant’s Amendment of March 10, 2003. As filed, claim 11 recited a process wherein the composition “is such that” in one of its cross sections,

20 to 60% of the total area occupied by the particles
corresponds to particles having a diameter ranging from 0.1 to 1 μm ,

5 to 20% of the total area occupied by the particles corresponds
to particles having a diameter ranging from 1 to 1.6 μm , and

20 to 75% of the total area occupied by the particles
corresponds to particles having a diameter of greater than 1.6 μm .

A review of the prosecution history of the present application shows that in the Amendment of March 10, 2003, applicant canceled claim 11 and incorporated the language of claim 11 into claim 1. Therefore, the present amendments to claim 1 have support throughout the disclosure of the present application.

The *Office Action* also states that claim 18 “makes no sense since it recites that 90% of the total area occupied by the particles correspond to capsules having a diameter.” (*Office Action*, p. 2). Applicant has herein amended claim 18 to recite “capsules having a diameter ranging from 0.1 to 1 μm .” This phrase can be found in claim 18 as filed, and it appears that the phrase was inadvertently omitted by applicant during prosecution. For example, in a *Preliminary Amendment* dated December 18, 2001, claim 18 recited a diameter “ranging from 0.1 to 1 μm .” (*See Preliminary Amendment*, dated December 18, 2001,

Appendix A, p. 22). However, in the next *Amendment* filed by applicant, dated March 10, 2003, it appears that the phrase was inadvertently eliminated from claim 18, even though the applicant did not indicate that that phrase of claim 18 was to be amended in the March 10, 2003 *Amendment*. Therefore, applicant respectfully requests that this correction be accepted into the record of the present application, and respectfully submits that as currently amended, claim 18 is not indefinite.

For at least the foregoing reasons, applicant respectfully submits that the rejection of claims 1-10 and 12-42 under 35 U.S.C. § 112, second paragraph, has been overcome, and request that it be reconsidered and withdrawn.

Multiply Dependent Claims 34 and 38

The Advisory Action of November 7, 2003 has stated that “Applicants are requested to correct improperly multiple dependent claims 34 and 38.” (*See* Advisory Action, p. 2). Therefore, applicant has amended claim 34 to depend solely from claim 1, and has amended claim 38 to depend solely from claim 34. Therefore, applicant respectfully submits that claims 34 and 38 are now in condition for allowance.

CONCLUSION

In view of the above amendments and remarks, applicant respectfully submits that the present claims are patentable, and an earlier allowance is earnestly sought.

No fee, other than the fee for extension of time, is believed to be due for the resubmission of this After Final Amendment. However, should any fee be required, please charge such fee to Pennie & Edmonds Deposit Account No. 16-1150.

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Respectfully submitted,

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